

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ANTHONY BRIAN MALLGREN,

Plaintiff,

v.

CATHERINE O'HAGAN WOLFE,

Defendant.

NO: 13-CV-0218-TOR

ORDER DISMISSING CASE

BEFORE THE COURT is Plaintiff's request to file a *pro se* complaint *in forma pauperis*. ECF No. 1 and 2. Also before the Court is Plaintiff's Motion to Obtain ECF Login and Password. ECF No. 3.

DISCUSSION

By Local Rule, each United States Magistrate Judge in this District is delegated the authority to "[r]ule upon applications to proceed *in forma pauperis*, pursuant to 28 U.S.C. § 1915." LMR 1(a)(16). By Order dated June 10, 2013, a United States Magistrate Judge reviewed Plaintiff's application to proceed *in forma pauperis* and denied the same with leave to renew. ECF No. 4. The Order

explained that Plaintiff provided an incomplete answer to question number 9, but allowed Plaintiff thirty days to submit a properly completed application (or pay the full filing fee). *Id.* Thirty days has passed. Plaintiff chose neither alternative, he filed a notice of appeal to the Ninth Circuit Court of Appeals instead. ECF No. 5. By Mandate dated June 26, 2013, the Ninth Circuit Court of Appeals granted Plaintiff's motion for dismissal of this premature appeal. ECF No. 11.

### ***In Forma Pauperis Determination***

*Forma pauperis* status requires two findings: (1) a finding of indigency, and (2) a finding that the underlying claim has some merit. *Bradshaw v. Zoological Soc. of San Diego*, 662 F.2d 1301, 1308 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(2)(B), notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action or appeal (i) is frivolous or malicious or (ii) fails to state a claim upon which relief may be granted.

A complaint fails to state a claim upon which relief may be granted if it lacks a cognizable legal theory or lacks sufficient facts to support a cognizable legal theory. *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). Plaintiff's Complaint does not state a cognizable legal theory, i.e., short plain statements showing the court's jurisdiction and the grounds for relief. *See* Fed. Rule Civ. Pro. 8(a).

Plaintiff names the Clerk of Court for the Second Circuit Court of Appeals as the Defendant and complains that he has been frustrated in the filing of pleadings with the Clerk's Office. Plaintiff asserts federal question jurisdiction under 28 U.S.C. § 2111 (Harmless Error) and the Due Process Clause of the Fifth Amendment. He claims he "has been unduly burdened by the court not following its own stated process and schedule." He seeks "specific performance of the Federal employee in regards to reversing the strike order, abiding by the schedule and performing other such stated duties." This does not constitute a cognizable legal theory.

Plaintiff failed to avail himself of the opportunity to amend his application to provide complete information, nor has he paid the filing fee within thirty days.

The Court recognizes that Plaintiff has filed at least 29 cases in the United States District Courts and 12 cases in the Circuit Courts of Appeal, this year. This case is one of eight actions which have been filed in this District since May 10, 2013. Eastern District of Washington case numbers 13-CV-0175-LRS, 13-CV-0180-TOR, 13-CV-0182-TOR, 13-CV-0210-TOR, 13-CV-0218-TOR, 13-CV-0228-TOR, 13-CV-0232-TOR, and 13-CV-0234-TOR. The first five in this list have now been dismissed by the District Court for failure to state a claim.

**Plaintiff is advised that the filing of further frivolous actions will result in the imposition of more serious sanctions than dismissal.**


**ACCORDINGLY, IT IS HEREBY ORDERED:**

1. Plaintiff's Application to Proceed in the District Court In Forma Pauperis, ECF No. 2, is **DENIED**.
2. Plaintiff's proposed Complaint, ECF No. 1, is **DISMISSED**.
3. Plaintiff's Motion to Obtain ECF Login and Password, ECF No. 3, is **DENIED** as Moot.

The District Court Executive is hereby directed to enter this Order, a Judgment of Dismissal, furnish copies to Plaintiff at his last known address, and **CLOSE** the file.

**DATED** July 11, 2013.



  
THOMAS O. RICE  
United States District Judge